

**ASSEMBLY BILL**

**No. 961**

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**Introduced by Assembly Member Krekorian**

February 26, 2009

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An act to add Article 14 (commencing with Section 10485) to Chapter 2 of Part 2 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 961, as introduced, Krekorian. Public contracts: state contract eligibility: genocidal regimes.

Existing law authorizes contracting between state agencies and private contractors and sets forth requirements for the procurement of goods and services by state agencies and the various responsibilities of state agencies and the Department of General Services in implementing state contracting procedures and policies. Existing law prohibits a scrutinized company, as defined, that is involved in specified activities in Sudan, from entering into a contract with a state agency for goods or services, subject to specified requirements and exemptions.

This bill would prohibit a scrutinized company, as defined, that was engaged in business with perpetrators of genocide, from entering into a contract with a state agency for goods or services. The bill also would require a prospective bidder for those state contracts, that currently or within the previous 3 years has had business activities or other operations outside of the United States, to certify that the company is not a scrutinized company and would impose civil penalties, as specified, for a company that provides a false certification. The bill would allow the Director of General Services, under specified conditions, to permit

a scrutinized company to enter into state contracts for goods and services.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Article 14 (commencing with Section 10485) is added to Chapter 2 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 14. Prohibition on Contracts with Companies that Aided  
Genocidal Regimes

10485. For purposes of this article, the following definitions apply:

(a) “Genocide” means any of the following events:

(1) The atrocities committed by the Ottoman and Turkish governments against Armenians from 1915 to 1923, inclusive, which constituted the Armenian Genocide, and the massacres of Armenians committed by the Ottoman Empire from 1894 to 1909, inclusive.

(2) The Holocaust committed by Nazi Germany against Jews from 1938 to 1945, inclusive, and the persecution and massacre of Roma, Slavic, Polish, Soviet, disabled people, homosexuals, and political and religious dissidents by the Nazi regime.

(3) The oppression, forced labor, and murder of the Cambodian people by the Khmer Rouge regime from 1975 to 1979, inclusive.

(4) The aggression and ethnic cleansing committed by the Rwandan Hutu majority against minority Rwandan Tutsis that constituted the Rwandan genocide of 1994.

(5) The aggression and ethnic cleansing committed by elements of the Bosnian Serb army against the people of Bosnia and Herzegovina from 1992 to 1995, inclusive.

(b) “Scrutinized company” means a company, and any affiliates of that company, that was engaged in business with the perpetrators of genocide and that still holds looted or deposited assets of a victim of a genocide or his or her heirs.

1 10485.5. (a) A scrutinized company is ineligible to, and shall  
2 not, bid on or submit a proposal for a contract with a state agency  
3 for goods or services.

4 (b) (1) Notwithstanding subdivision (a), the Director of General  
5 Services may permit a scrutinized company, on a case-by-case  
6 basis, to bid on or submit a proposal for a contract with a state  
7 agency for goods or services, if it is in the best interests of the state  
8 to permit the scrutinized company to bid on or submit a proposal  
9 for one or more contracts with a state agency for goods or services.

10 (2) In making this determination, the Director of General  
11 Services may consider attempts by a scrutinized company to settle  
12 claims against it by a victim of genocide, or his or her heirs, or  
13 evidence refuting those claims presented by the scrutinized  
14 company.

15 10486. (a) A state agency shall require a company that submits  
16 a bid or proposal with respect to a contract for goods or services,  
17 that currently or within the previous three years has had business  
18 activities or other operations outside of the United States, to certify  
19 that the company is not a scrutinized company.

20 (b) A state agency shall not require a company that submits a  
21 bid or proposal with respect to a contract for goods and services  
22 to certify that the company is not a scrutinized company if the  
23 company has obtained permission to bid on or submit a proposal  
24 for a contract with a state agency pursuant to subdivision (b) of  
25 Section 10485.5.

26 10486.5. (a) If the Department of General Services determines  
27 that a company has submitted a false certification under Section  
28 10486, the company shall be subject to all of the following:

29 (1) The company is liable for a civil penalty in an amount that  
30 is equal to the greater of two hundred fifty thousand dollars  
31 (\$250,000) or twice the amount of the contract for which a bid or  
32 proposal was submitted.

33 (2) The state agency or the Department of General Services may  
34 terminate the contract with the company.

35 (3) The company is ineligible to, and shall not, bid on a state  
36 contract for a period of not less than three years from the date the  
37 state agency determines that the company submitted the false  
38 certification.

39 (b) The Department of General Services shall report to the  
40 Attorney General the name of the company that the Department

1 of General Services determined had submitted a false certification  
2 under Section 10486, together with its information as to the false  
3 certification, and the Attorney General shall determine whether to  
4 bring a civil action against the company. The company shall pay  
5 all costs and fees the plaintiff incurred in a civil action, including  
6 costs incurred by the state agency and the Department of General  
7 Services for investigations that led to the finding of the false  
8 certification and all costs and fees incurred by the Attorney  
9 General.

10 10487. (a) If any one or more provision, section, subdivision,  
11 paragraph, sentence, clause, phrase, or word of this act or the  
12 application thereof to any person or circumstance is found to be  
13 invalid, illegal, unenforceable, or unconstitutional, the same is  
14 hereby declared to be severable and the balance of this act shall  
15 remain effective and functional notwithstanding such invalidity,  
16 illegality, unenforceability, or unconstitutionality.

17 (b) The Legislature hereby declares it would have passed this  
18 act, and each provision, section, subdivision, paragraph, sentence,  
19 clause, phrase or word thereof, irrespective of the fact that any one  
20 or more provision, section, subdivision, paragraph, sentence,  
21 clause, phrase, or word be declared invalid, illegal, unenforceable,  
22 or unconstitutional.